

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 80/AIL/Lab./J/2012, dated 10th May 2012)

NOTIFICATION

Whereas, the Award in I. D. No. 2/2004, dated 1-3-2012 of the Labour Court (Sub-Court), Mahe in respect of the industrial dispute between the management of M/s. Patel Roadways Agency, Mahe and its workman Thiru M.K. Sukumaran over his dismissal from service has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,

Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT (SUB-COURT)
AT MAHE**

Present : Thiru SWARNAM J. NATARAJAN, M.L.,
Presiding Officer-cum-Sub-Judge.

Thursday, the 1st day of March 2012

I. D. No. 2/2004

M.K. Sukumaran . . . Petitioner/
Workman.

Versus

P. Chandran,
M/s. Patel Roadways Agency, Mahe. . . Respondent/
Management.

This petition coming on this day for hearing in the presence of Thiru M. K. Sureshkumar and Thiru A.P. Ashokan, Advocates for the petitioners and Thiru T. K. Gangadharan and Thiru M. Sidharthan, Advocates for the respondent, upon hearing both parties, upon perusing the case records, and having stood over for consideration, this court delivered the following :-

AWARD

This is an industrial dispute arising out of the reference made by the Labour Department, Government of Pondicherry, *vide* G.O. Rt No.71/2004/Lab./AIL/J, dated 3-6-2004 for adjudication of the dispute on the following points:

(a) Whether the domestic enquiry conducted by Enquiry Officer Thiru P.K.Anwar, Advocate at the instance of the employer is vitiated due to non-adherence of the principles of "Natural Justice" and for the non-payment of subsistence allowance during suspension period?

(b) Whether the dismissal of the employee Thiru M. K. Sukumaran by the employer of Patel Roadways is justified or not? If not, what relief he is entitled to?

2. The petitioner had submitted in his claim statement that he is a workman, working as Assistant under the management of M/s. Mahe Business Associates. He has got more than 7 years of continuous record of service under the management and later the management become enmity towards him. In order to terminate his service, in a predetermined motive the management had issued a charge sheet, dated 3-12-2002 incorporating false and fabricated allegations. On 4-12-2002 the explanation for the charge sheet was submitted by him. Without considering the submissions made out by workman the management was pleased to appoint Thiru P.K. Anwar as Enquiry Officer. Thereafter the workman was dismissed from service as per order, dated 19-5-2003. The dismissal order is illegal and unjustifiable and *in toto* it is against the principles of natural justice. The Enquiry Officer did not follow fair methods in the course of enquiry and he was biased and predetermined. The main allegations in the charge sheet are that the workman committed breach of trust and financial irregularities. Whereas, no entrustment was made to the workman by the employer. He was not looking after the day-to-day running of the establishment and the management was the custodian of the stock, cash and valuables. The workman never committed breach of trust or financial irregularities or showed disrespect to the management. Many times the workman applied for payment of subsistence allowance but he was paid only ₹ 1,000 during the entire period of suspension. The workman submitted to the management and the Enquiry Officer that he can co-operate with the enquiry only when the subsistence allowance is paid. But the management did not pay the subsistence allowance. The findings by the Enquiry Officer is baseless and unsustainable. The workman is entitled to be reinstated with service with full back wages, benefits and continuity of service.

3. The management filed counter denying all the allegations raised by the workman and stated that the petitioner was appointed as Assistant of the Patel Roadways Agency and he is put in full in-charge and administration of the agency at Mahe. The keys of the office, godown, table and almirah were in possession of the workman. The workman started committing criminal breach of trust and criminal misappropriation by releasing consignments without obtaining freight charges and consignee copies. The workman did not co-operate with the inspection by the principal of Patel Roadways Limited. Therefore the management was forced to suspend the workman with effect from 3-12-2002. After thorough enquiry, the Enquiry Officer had found that the workman is guilty of all the charges. The workman did not co-operate and made allegations against him. The Enquiry Officer had provided sufficient opportunity to examine witnesses on his part. Whereas, the workman, without utilising the opportunity did not participate and avoided to cross examine the witness. The allegations made against the enquiry officer is false. The findings by the enquiry is legally sustainable and binding on the petitioner. Out of the malpractice done by the workman the Agency was terminated and the employer suffered heavy loss of ₹ 2,00,000. The domestic enquiry conducted is proper and valid and in consonance to the principles of natural justice. Therefore the respondent prays for dismissal of the petition.

4. To fortify their respective contentions, the Enquiry Officer was examined as PW.1 and Ex.P1 and Ex.P2 enquiry report and proceedings were marked through the Enquiry Officer.

5. The points for determination are :

(1) Whether the domestic enquiry conducted by the Enquiry Officer is vitiated by non-adherence to the principles of natural justice and due to non-payment of subsistence allowance ?

(2) Whether the findings of the Enquiry Officer and the dismissal order of the employer is justified? If not, what relief, the workman is entitled to ?

6. After enquiry and after arguments the case was reserved for orders. In the mean time the workman filed advance hearing petition with joint compromise petition filed by both. Both the parties present and the terms of the compromise is as follows:

“The management paid ₹ 50,000 to the workman and the same was received by the workman as full and final settlement of all his claims against the management including of claim for other monetary benefits.”

7. In view of the settlement made by the parties no industrial dispute exists between the parties for adjudication and they prayed to record the settlement and pass no dispute award. The terms of the compromise was explained to the parties and they agreed in full after understanding the contents and terms. As the matter is settled between the parties and compromise memo. filed, this court finds that the matter need not be adjudicated in terms of the evidence adduced by the parties and the documents available on record. This court has accepted the compromise petition filed by both the parties and inclined to close the industrial dispute and passed award as per the joint settlement petition filed by the parties. Hence, the reference is answered accordingly.

8. In the result, the joint settlement petition filed by the workman and the management under section 18 (i) of the Industrial Disputes Act, 1947 is recorded. In terms of the settlement, the workman received ₹ 50,000 from the management towards full and final settlement of all his claims against the management. In view of the settlement, this court is inclined to pass no dispute award under section 18(i) of the Industrial Disputes Act, 1947. The joint settlement petition filed by the parties shall form part of the award. No costs.

Dictated to the stenographer, transcribed by her, corrected and pronounced in the open court on this the 1st day of March 2012.

SWARNAM J. NATARAJAN,
Presiding Officer-cum-Sub-Judge,
Mahe.

List of witnesses :

PW.1 — P.K. Anwar, Enquiry Officer

List of witnesses examined on the side of workman :

WW.1 — M.K.Sukumaran.

List of witnesses examined on the side of management : Nil

List of exhibits marked :

Ex.P1 — 29-4-2003 Enquiry report

Ex.P2 — — Enquiry proceedings

List of exhibits marked on the side of workman : Nil

List of exhibits marked on the side of management : Nil

SWARNAM J. NATARAJAN,
Presiding Officer-cum-Sub Judge,
Mahe.